

Nos. 13-CV-348 & 13-CV-358

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

D.C. HEALTHCARE SYSTEMS, INC.,
APPELLANT,

V.

DISTRICT OF COLUMBIA DEPARTMENT OF
INSURANCE, SECURITIES, AND BANKING,
&
D.C. CHARTERED HEALTHPLAN, INC.
APPELLEES.

ON APPEAL FROM AN ORDER OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

**RESPONSE OF APPELLEES
TO APPELLANT'S AMENDED MOTION TO EXPEDITE RELATED APPEALS**

D.C. Healthcare Systems, Inc. ("DCHSI") has moved to consolidate and expedite these appeals. As indicated in DCHSI's motion, appellees consent to DCHSI's motion to consolidate these appeals. In addition, appellees respond as follows to DCHSI's motion to expedite.

BACKGROUND

D.C. Chartered Health Plan, Inc. ("Chartered") is a duly licensed District health maintenance organization ("HMO") that provides Medicaid and Alliance Program coverage to approximately 100,000 District residents pursuant to D.C. Code § 31-3401 *et seq.* (2001). DCHSI is Chartered's sole owner. DCHSI, in turn, is wholly owned by Jeffrey E. Thompson.

Chartered currently provides Medicaid services to District residents pursuant to a contract with the District of Columbia Department of Health Care Finance (“DHCF”). Its contract with DHCF is due to expire on April 30.

As an HMO, Chartered is regulated by the District of Columbia Department of Insurance, Banking, and Securities (“DISB”). In that role, DISB was compelled by matters related to Chartered’s financial status to take steps to place the company into rehabilitation. To that end, on October 19, 2012, DISB filed a consent petition in the Superior Court for an order of rehabilitation for Chartered pursuant to D.C. Code §§ 31-1310 through 31-3114 (2001), which governs the rehabilitation of insurers and HMOs. That same day, the Superior Court appointed DISB’s Commissioner William P. White as Chartered’s Rehabilitator. Thereafter, on March 1, 2013, the Superior Court approved the Rehabilitator’s plan for reorganizing Chartered. The reorganization plan calls for some, but not all, of Chartered’s assets to be sold to AmeriHealth. DCHSI, in the role of an “interested party,” purports to appeal from that order.

In addition, after the Superior Court approved the reorganization plan, DCHSI moved the Superior Court for a stay of its order. DCHSI also sought additional injunctive relief against the District of Columbia. The Superior Court denied these requests in an order dated April 2. DCHSI purports to appeal from that order as well.

DISCUSSION

In support of its motion to expedite these appeals, DCHSI asserts without further explanation that “Amerihealth will assume control over Chartered on May 1, 2013—and the longer Amerihealth controls Chartered, the harder it will become to unwind that transaction.”

Motion 2-3. DCHSI contends that expedited consideration is needed, because “the sooner these appeals are resolved, the less disruption there may be to the operation of these companies.” Motion 3. For relief, DCHSI asks the Court to “order an expedited briefing schedule and argument so that the appeal may be heard and resolved as quickly as possible.” Motion 3.

This Court’s Rule 4(c)(1) governs expedited appeals. It provides in relevant part that “[u]pon completion of the record, the Clerk will issue a briefing order, and the case will be given priority in calendaring.” D.C. App. R. 4(c)(1)(C). While appellees question the sufficiency of the reasons offered by DCHSI for expedited consideration of these appeals, they do not oppose DCHSI’s request that these appeals be given priority in calendaring after full briefing as contemplated by Rule 4(c)(1)(C).

DCHSI appears, however, to seek relief beyond that afforded by the rule in two respects. First, DCHSI asks the Court to “order an expedited briefing schedule.” Motion 3. It is unclear whether DCHSI is seeking expedited issuance of the briefing schedule that would otherwise be issued in the ordinary course, or whether DCHSI is asking that the Court issue a truncated briefing schedule that shortens, and thereby expedites, the time for the parties to file their respective briefs, or both. Rule 4(c)(1)(C) does not expressly contemplate a truncated briefing schedule in an expedited appeal. Instead, Rule 31(a)(1) governs the time for serving and filing briefs, and after full briefing Rule 4(c)(1)(C) then gives the expedited appeal “priority in calendaring” for purposes of argument or submission on the briefs.

If DCHSI’s motion is construed as a request to shorten the appellees’ time to file a responsive brief, then they object to it. This case is complex, the record is somewhat

voluminous, and the Court will likely benefit from carefully drafted briefs. Moreover, DCHSI's vague concerns about maintaining the *status quo* post-May 1 do not justify the extraordinary relief it evidently seeks. This is especially so given its delay in raising any issues below. At the heart of DCHSI's challenges is the Rehabilitator's decision—which he announced publicly on December 3, 2012—that Chartered would not bid on a new Medicaid contract with DHCF. DCHSI was aware of that decision the day the Rehabilitator announced it. But DCHSI waited more than three months, until March 2013, to seek relief in the Superior Court that has been overseeing Chartered's rehabilitation.

Second, DCHSI asks the Court to issue an order prohibiting appellees from seeking an extension of time to file their brief. Rule 4(c)(1) does not expressly contemplate such a prohibition, however, and appellees can envision circumstances in which they may need a modest extension of time—one that would not impact the Court's ability to give the appeals priority in calendaring. Accordingly, appellees object to DCHSI's request that they be prohibited at the outset from seeking an extension of time to file their brief. Instead, should the need arise, it would make more sense for the Court to consider any request for extension if and when it is made, giving due consideration to the circumstances as they then exist.

CONCLUSION

The Court should grant DCHSI's motion to expedite these appeals to the extent that they will be given "priority in calendaring," but should deny DCHSI's request to the extent that it seeks to truncate appellees' time for filing a responsive brief or to prohibit appellees from seeking any extension of time to file their brief.

Respectfully submitted,

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April 2013

CERTIFICATE OF SERVICE

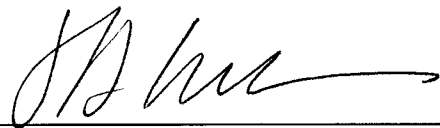
I certify that on April 23, 2013, this response was served by first-class mail, postage prepaid, and email to:

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A handwritten signature in black ink, appearing to read "SL Anderson", written over a horizontal line.

Stacy L. Anderson